

RECEIVED
JUN 18 1996
FCC MAIL ROOM



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FLOOR
P.O. Box 46005
NEWARK NJ 07101

CHRISTINE TODD WHITMAN
Governor

BRIAN W. CLYMER
State Treasurer
BLOSSOM A. PERETZ
Director

June 14, 1996

VIA EXPRESS MAIL

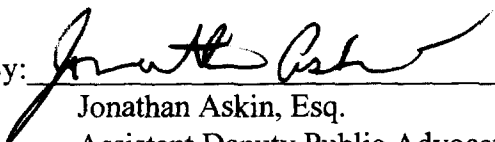
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: In the Matter of Implementation of Section
34(a)(1) of the Public Utility Holding
Company Act of 1935, as added by the
Telecommunications Act of 1996
(GC Docket 96-101)

TO THE HONORABLE COMMISSION:

Enclosed please find an original and eleven copies of Comments to be filed with the Commission in the above-referenced matter. Please time/date stamp the copy marked "File" and return it to this office in the enclosed, self-addressed stamped envelope.

Respectfully submitted,
Blossom Peretz, Ratepayer Advocate

By: 
Jonathan Askin, Esq.
Assistant Deputy Public Advocate

Enc.

cc: International Transcription Services, Inc.
2100 M Street, N.W. Suite 140
Washington, D.C. 20037

No. of Copies rec'd 07/11
List ABCDE

RECEIVED
JUN 18 1996
FCC MAIL ROOM



State of New Jersey
DEPARTMENT OF THE TREASURY
DIVISION OF THE RATEPAYER ADVOCATE
31 CLINTON STREET, 11TH FLOOR
P.O. Box 46005
NEWARK NJ 07101

CHRISTINE TODD WHITMAN
Governor

BRIAN W. CLYMER
State Treasurer
BLOSSOM A. PERETZ
Director

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Implementation of Section 34(a)(1) of the)
Public Utility Holding Company Act of) GC Docket No. 96-101
1935, as added by the Telecommunications)
Act of 1996)

COMMENTS OF THE NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

On behalf of ratepayers in the State of New Jersey, the New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") submits these comments in response to the Notice of Proposed Rulemaking. In the Matter of Implementation of Section 34(a)(1) of the Public Utility Holding Company Act 1935, as added by the Telecommunications Act of 1996, GC Docket No. 96-101 ("NPRM"), adopted and released by the Federal Communications Commission ("FCC") on April 25, 1996.

The Ratepayer Advocate is statutorily empowered to represent and protect the interests of New Jersey's utility consumers -- residential, small business, commercial and industrial -- to

ensure that they receive safe, adequate and proper utility service at affordable rates that are just, reasonable and nondiscriminatory.

The Ratepayer Advocate supports competition and believes entry by public utilities into telecommunications markets will further serve to increase options and reduce rates for consumers of telecommunications services. As such, the Ratepayer Advocate generally supports the FCC's conclusions regarding the limited scope of its inquiry under Section 34(a)(1) of the Public Utility Holding Company Act ("PUHCA"), as added by the Telecommunications Act of 1996 ("Telecom Act"). The Ratepayer Advocate believes that the FCC's role pursuant to Section 34(a)(1) should not extend beyond determining whether an "exempt telecommunications company" ("ETC") applicant complies with the relatively narrow certification criteria enumerated in the NPRM and the Draft Regulations attached to the NPRM as Appendix A. The Telecom Act simply eliminates the provision in the PUHCA that required approval from the Securities and Exchange Commission ("SEC") before a public utility holding company ("PUHC") could enter the telecommunications marketplace.

The Ratepayer Advocate agrees with the FCC's interpretation that the Telecom Act intended to vest jurisdiction over the relationships and transactions between a PUHC and an ETC primarily with the affected state commission. For instance, pursuant to Section 34(j), the Federal Energy Regulatory Commission ("FERC") and state commissions are still authorized to determine whether a public utility company may recover in its rates the costs of products or services purchased from or sold to an associate or affiliate company that is an ETC. Furthermore, pursuant to Section 34(m), state commissions have the authority to conduct independent audits of PUHCs and their affiliates. Section 34(b) retains jurisdiction with state

commissions to approve sales of existing rate-based facilities by public utilities to affiliated ETCs.

PUHCA Section 34, however, does grant the FCC broad authority to determine what and how much information to require of an ETC applicant. Although the Ratepayer Advocate endorses simple, “streamlined” ETC status determination procedures, the Ratepayer Advocate believes the initial application is the best place to collect information which various federal and state authorities may eventually require to make fair and timely decisions affecting PUHCs, ETCs and their telecommunications competitors.

The Ratepayer Advocate believes there is a genuine possibility that a PUHC might subsidize the operations of its affiliated ETC. Such subsidization could give public utilities an unfair advantage over other providers of telecommunications services, thereby hampering competitive forces.

Because this rulemaking asks commenters to indicate whether or not the ETC filing requirements “should either be more expansive or narrow,” NPRM at ¶ 10, the Ratepayer Advocate would like to express its belief that ETC application procedures should require applicants to include:

- (1) a schedule listing all individuals, firms, companies, partnerships and other entities with whom the PUHC and the ETC applicant are affiliated; and
- (2) a certification as to whether or not the PUHC intends to subsidize the ETC’s telecommunications operations with revenue generated from the PUHC’s other businesses.

With this information, affected federal and state commissions, consumer advocacy organizations and other interested parties can determine and monitor the prospects of PUHC/ETC cross-subsidization.

The application requirements outlined above are significantly less onerous than the “streamlined” open video system (“OVS”) application procedures laid out in the Second Report and Order, In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996 -- Open Video Systems, CS Docket No. 96-46, released June 3, 1996 (“OVS Order”), providing for local exchange carrier (“LEC”) entry into the video delivery marketplace.¹ Furthermore, these application procedures do not contravene anything in the Telecom Act and will help to ensure a level playing field in the new competitive telecommunications marketplace. As the FCC has recently noted “A streamlined certification process does not mean . . . that the Commission may not request and review necessary information.” OVS Order at ¶ 31.

While the state regulatory commissions are the agencies primarily empowered to monitor cross-subsidization, such affiliation lists and cross-subsidization information can be easily

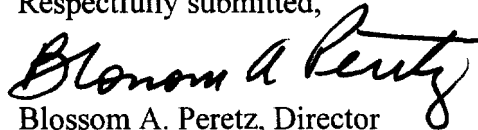
¹In the OVS Order, the FCC required applicants for open video systems (“OVS”) to include lists of affiliated entities in their certifications as well as many much more burdensome disclosure requirements. The FCC further required incumbent local exchange carriers (“LECs”), applying for OVS, “to allocate their costs between their regulated and nonregulated activities in accordance with specific cost principles. The largest incumbent LECs are further required by the Commissions’ rules to file cost allocation manuals . . . [that apply accounting procedures that are] consistent with the specific cost principles established by the Commission.” OVS Order at ¶ 32.

Although the OVS Order requires LECs to segregate the costs of providing regulated telecommunications services from costs of providing video programming via OVS, the substantive cost allocation requirements between telephone company operations and OVS operations is being addressed in a different, pending rulemaking, Notice of Proposed Rulemaking in CC Docket No. 96-112, FCC No. 96-214 (released May 10, 1996). That proceeding will address cost allocation issues raised by several commenters urging the FCC to prevent LECs from subsidizing OVS at the expense of their regulated telephone ratepayers. OVS Order at fn92.

obtained in the ETC application and could be useful to both the FCC, state commissions, consumer advocacy groups, business competitors and other affected parties in their efforts to protect consumer interests and guard against unwanted cross-subsidization. Such minor procedural requirements should not seriously impair the ease and simplicity of PUHC entry into telecommunications via an ETC and should help to promote fair competition and a level playing field among all participants in the telecommunications marketplace.

Finally, the proposed rules also require an ETC applicant to serve a copy of its ETC application on the SEC and affected state commissions. NPRM at ¶12. The FCC seeks comment on this requirement. Id. The Ratepayer Advocate supports this procedure. Copying the SEC and affected state commissions on ETC applications will help them to make speedy, informed judgments regarding all aspects of public utility inclusion in the telecommunications marketplace. Furthermore, if the affiliation list and cross-subsidization certification are required in ETC applications, then affected federal and state agencies will be better prepared to consider and rule on potentially problematic cross-subsidization issues.

Respectfully submitted,

A handwritten signature in black ink, reading "Blossom A. Peretz". The signature is fluid and cursive, with the first name "Blossom" and last name "Peretz" clearly legible.

Blossom A. Peretz, Director
New Jersey Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07101
(201) 648-2690

Dated: June 14, 1996